

General Information Letter: Federal change is not "final" before the date taxpayer receives notice that IRS has accepted a closing agreement.

October 25, 2002

Dear:

This is in response to your letter dated October 24, 2002, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

As discussed yesterday on the phone, COMPANY has signed a Federal Form 870-AD with the IRS (copy included with the fax). Because of the short time and the number of years involved, I originally discussed with you the possibility of obtaining an extension to file the Illinois amended returns for COMPANY. However, you indicated that the statute does not provide for an extension to file federal changes and requires the changes to be reported within 120 days, with potential penalties if not filed and paid during this period.

An important issue for COMPANY is when the federal change report for Illinois is due. COMPANY signed the Federal Form 870-AD on May 16, 2002 and submitted to the IRS for approval. The Appeal Team Case Leader for the IRS signed the form on July 1, 2002. However, he did not notify COMPANY at this time. The first time COMPANY received official notice of the signed agreement was by a fax dated July 24, 2002. To avoid controversy, COMPANY has been filing federal changes using the July 1, 2002 date. However, (a) with multiple tax years involved (1978 to 1990); (b) the numerous legal entities involved; and (c) the current 2001 state and local returns being due during the same period, we will have difficulty to correctly complete the Illinois amended returns by October 29, 2002, the due date if the starting date is July 1, 2002.

Since COMPANY was not notified by the IRS of the final Federal Form 870-AD until July 24, 2002, we are requesting your opinion whether this date can be used to determine the Illinois due date for the federal changes. This should provide COMPANY enough time to correctly file amended returns.

Response

Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506) requires a taxpayer to notify the Department of federal changes. It provides, in part:

Such notification shall be in the form of an amended return or such other form as the Department may by regulations prescribe, shall contain the person's name and address and such other information as the Department may by regulations prescribe, shall be signed by such person or his duly authorized representative, and shall be filed not later

than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, tentative carryback adjustment, abatement or credit resulting therefrom has been assessed or paid, whichever shall first occur.

The Department has issued no regulations providing guidance on when the 120-day period begins. A Form 870-AD is an informal agreement that is not in itself binding on the taxpayer or the IRS. See *Uinta Livestock Corp. v. United States*, 355 F.2d 761 (10th Cir. 1966). Accordingly, it is not clear that mere execution of a Form 870-AD means that the federal change has been "agreed to" within the meaning of Section 506(b). Cf. *In re Appeal of Eddlemon*, 95-SBE-015 (Cal. St. Bd. of Equalization December 12, 1995) (holding that execution of a Form 870-AD was not a "final determination" under California law requiring a report of federal change). Moreover, beginning the period for reporting a federal change prior to the date on which the taxpayer has notice of the change would effectively deny the taxpayer the benefit of the full 120-day period. See *Data General Corp. v. Limbach*, 91-M-30 (Ohio Bd. of Tax Appeals November 12, 1993). Accordingly, the 120-day period provided in Section 506(b) for reporting a federal change in this case did not begin prior to July 24, 2002, the date on which COMPANY received notice that the IRS had executed the Form 870-AD.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax